Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In The Supreme Court of the United States

October Term, 1977

No. 77-355

Norman J. Bernstein, Husband, Petitioner

v.

State of Florida
Raymond E. Rhodes, Clerk and Individually
Alban E. Brooke
Donald S. Reisman
Marguerite H. Bernstein, Wife

Eldad W. Brophy, Husband, Petitioner

v.

State of New Hampshire
Graper & Swanson,
Professional Association and as Individuals
Ann Brophy, Wife

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Norman J. Bernstein, Esq., Pro Se
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~~Counsel for~~ *Petitioners*

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Norman J. Bernstein, Husband and Eldad W. Brophy, Husband, the Petitioners herein, pray that a Writ of Certiorari be issued to review the Judgment of the United States Court of Appeals for the Second Circuit on June 7, 1977.

A. OPINIONS BELOW

1. The Judgment in the Bernstein case (File No. 77-7085) of the United States Court of Appeals dated and filed June 7, 1977 is printed as Appendix A hereto.

2. The Judgment in the Brophy case (File No. 77-7154) of the United States Court of Appeals dated and filed June 7, 1977 is printed as Appendix B hereto.

3. The Memorandum and Order of the United States District Court for the District of Vermont, in the Bernstein case, dated February 1, 1977 (File No. 76-212) iis printed as Appendix C hereto.

4. The Memorandum and Order of the United States District Court for the District of Vermont in the Brophy case dated February 1, 1977 (File No. 76-224) is printed as Appendix D hereto.

B. JURISDICTION

1. The judgment of The United States Court of Appeals was entered on June 7, 1977. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(a).

C. QUESTIONS PRESENTED

Bernstein Case

1. Whether it is lawful and constitutional for a Florida Court to grant a divorce to the wife of a "Born Again" Hebrew-Christian, not present at the Hearing, who had prior thereto, Moved the Court to Order spiritual counselling for the 18 year marriage: —

— WHERE the parties resided in Connecticut and Vermont for all but 6 months of their married life

— WHERE the Court totally ignored the Counselling Motion

— WHERE the clerk of the Appellate Court of Florida was rude and obstructive in the course of the petitioner's appeal

— WHERE petitioner's Florida Counsel, admittedly on his own, allowed the Appeal time to lapse

— WHERE the Florida Courts, Judges, and Lawyers are insensitive to the sanctity of the marital relationship and have no wisdom or compassion to handle troubled marriages, and

— WHERE the divorce laws of Florida are anti-Christian and deprive the petitioner of the free exercise of his religion in which Husband's Lord - Jesus Christ - does NOT make any allowance for any document which will dissolve a marriage for any cause.

2. IN SUMMARY, the vital and far-reaching Question here presented is whether this Country — the United States of America — a Nation founded by God and avowedly under God — can permit State Courts to grant divorces ("quickie", "no-fault" or otherwise) in direct opposition to the Judeo-Christian Commandment and Fundamental Law that Divorce is Ungodly, abhorrent, destructive and a threat to the very foundation and well being of this Country.

Brophy Case

3. Whether it is lawful for a New Hampshire Court to grant a divorce to the wife of a "Born Again" Christian Husband in a marriage of some 18 years where 4 children had been born to this couple, in a swift and summary procedure of about 3 months from the time of service to the issuance of the decree.

4. Whether for reasons similar to the Bernstein case (paragraphs 1 & 2 supra), such a divorce violates the Fundamental Rights of said Husband, Wife and Children.

D. CONSITUTIONAL AND STATUATORY PROVISIONS INVOLVED

1. First Amendment to the U. S. Constitution.

2. Fourteenth Amendment to the U. S. Constitution.

3. The Civil Rights Acts of the United States.

4. The Holy Bible — God's Eternal Laws (see Appendix E)

E. STATEMENT OF THE CASE

1. The case is summarized in the Memorandum and Order of the District Court - Appendix B herein.

2. The Bernstein case is complex, involves 5 counts and 42 paragraphs. The Summary Dismissal by the District Court constitutes a personal and ultimately a national tragedy.

3. Bernstein's "judicial treatment" by the Florida Judicial System constitutes a personal and ultimately a national tragedy.

4. The Brophy case has the additional element of the involvement of 4 children who shall suffer the loss of a Christian home headed by the natural father and one of the reasons God abhors divorce as stated in the Holy Bible, Book of Malachi - Chapter 2, Verse 15.

F. THE RULINGS BELOW

The District Court cited case authority which is outdated, non-applicable or which should be overruled in the face of this national debacle of ever mounting divorces (1 million or more in 1975!) . . .

For Example:

1. Ex Parte Young - a 1908 case - is of no pertinency in this time of mounting national crisis.

2. Edelman v Jordan 415 U.S. 651 should be overturned. See Douglas dissent therein.

3. The cases cited to protect the Clerk of the Florida Court are not cogent or persuasive or applicable.

4. The alleged jurisdictional deficiencies and that of process are not practical and real to this vital case. The case is **in fact** one of Norman and Marguerite Bernstein, Husband and Wife v. the State of Florida. Similarly it is Mr. and Mrs. Eldad W. Brophy and Family v. the State of New Hampshire.

5. The 1859 Barber case and the 1877 Pennoyer v. Neff case do not in any way pertain to the America of 1977 where the assult on the family and the sanctity of Marriage is unparalleled in our 200-year history.

G. REASONS FOR GRANTING THE WRIT

1. The very survival of America.

2. The recognizing by the Judiciary that we are still a Nation Under God, and that God's Laws on Marriage and Divorce are still vital and necessary.

3. The alleviating of the unbearable pain caused by the tearing of one's very FLESH by the Courts in granting a divorce.

4. The preservation of a Marriage is a FUNDAMENTAL RIGHT.

CONCLUSION

Wherefore, petitioners respecfully pray that a Writ of Certiorari be granted.

Dated at Londonderry, Vermont this 30th day of August, 1977.

NORMAN J. BERNSTEIN, Husband
ELDAD W. BROPHY, Husband
Petitioners

~~by~~

~~Norman J. Bernstein,~~ Esq.

_____

~~Their Counsel~~

Appendix A

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventh day of June one thousand nine hundred and seventy-seven.

Present:

HON. IRVING R. KAUFMAN,
Chief Judge.

HON. ROBERT P. ANDERSON

HON. WALTER R. MANSFIELD,
Circuit Judges,

NORMAN J. BERNSTEIN, Husband,
Plaintiff-Appellant,

v.

STATE OF FLORIDA, RAYMOND E. RHODES, Clerk and Individually, ALBAN E. BROOKE, DONALD S. REISMAN, MARGUERITE H. BERNSTEIN, Wife,
Defendants-Appellees.

77-7085

77-7085

Appeal from the United States District Court for the District of Vermont.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Vermont, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the basis of the memorandum opinion of James S. Holden, J., dated February 1, 1977.

Irving R. Kaufman

Robert P. Anderson

Walter R. Mansfield

Appendix B

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventh day of June one thousand nine hundred and seventy-seven.

Present:

HON. IRVING R. KAUFMAN,
Chief Judge.

HON. ROBERT P. ANDERSON

HON. WALTER R. MANSFIELD,
Circuit Judges,

UNITED STATES COURT OF APPEALS
FILED
JUN 7 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ELDAD W. BROPHY, Husband,
Plaintiff-Appellee,

v.

THE STATE OF NEW HAMPSHIRE, GRAPER AND SWANSON, PROFESSIONAL ASSOCIATION, and as individuals, and ANN BROPHY, Wife,
Defendants-Appellees.

77-7154

77-7154

Appeal from the United States District Court for the District of Vermont.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Vermont, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the basis of the memorandum opinion of James S. Holden, J., dated February 2, 1977.

Irving R. Kaufman
IRVING R. KAUFMAN

Robert P. Anderson
ROBERT P. ANDERSON

Walter R. Mansfield
WALTER R. MANSFIELD

BEST COPY AVAILABLE

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Norman J. Bernstein Plaintiff	)	
v.	)	Civil Action File No. 76-212
State of Florida Raymond E. Rhodes, Clerk and Individually Alban E. Brooke Donald S. Reisman Marguerite H. Bernstein Defendants	)	

MEMORANDUM AND ORDER

With much religious zeal as a "reborn Christian" the plaintiff has commenced this action pro se against the State of Florida; Raymond E. Rhodes, the Clerk of the First District Court of that state; Alban E. Brooke, his former wife's attorney in a Florida divorce proceeding; Donald S. Reisman, his own counsel; and his former wife, Marguerite H. Bernstein. The principal allegation is to the effect that a judgment of divorce in Florida proceedings, in which all the defendants participated, violated his rights protected by the First and Fourteenth Amendments to the United States Constitution. It appears that the plaintiff is now a citizen of Vermont; all defendants, save the State of Florida, are citizens of that state and were served by summons in that jurisdiction. The State of Florida, by its Attorney General, and the defendants Brooke and Bernstein have moved to dismiss the action for want of personal and subject matter jurisdiction and improper venue.

The plaintiff seeks a judgment declaring the divorce laws of Florida to be unconstitutional and his divorce to be null and void. He asks money damages against the State, the defendant Rhodes and the two attorneys, and a judgment encouraging reconciliation of the spouses "to restore the parties to their lawful and Godly position as husband and wife." He also seeks temporary and permanent injunctive relief to support any decree the court might award.

Bernstein's case regarding the unconstitutionality of the Florida divorce laws is not explained. His claim against the clerk of the Florida court resides in Rhode's alleged frustration of an appeal from the divorce decree. Brooke, it is claimed, discouraged reconciliation, maintained that marital counselling had taken place, when in fact it

had not, encouraged the state court and its clerk to dismiss Bernstein's appeal for lack of prosecution, and so on. The claim against Reisman is essentially one of malpractice, charging that his attorney failed to perfect an appeal from the divorce decree. The action against the plaintiff's wife is concluded by references to the New Testament forbidding divorce.

The motion to dismiss the action against the State of Florida is well founded. The claim for damages is precluded by the Eleventh Amendment. **Edelman v. Jordan**, 415 U.S. 651 (1974). The prayer for injunctive relief fails to come within the exception permitted by **Ex Parte Young**, 209 U.S. 123, 156 (1908), since no executive officer of the state is made a party. The defendant Rhodes, clerk of the Florida district court, as an officer of the court is within the protection of judicial immunity. See **Davis v. McAteer**, 431 F.2d 81 (8th Cir. 1970); **Stewart v. Minnick**, 409 F.2d 826 (9th Cir. 1969); **Sullivan v. Kelleher**, 405 F.2d 486 (1st Cir. 1968).

It appears that none of the defendants were served or found within the State of Vermont. The service effected fails to come within the provisions of Fed.R.Viv.P. 4(E), 12 V.S.A. § 913, since none of the defendants were within the reach of Vermont's long arm statute according to the teaching of **Hansen v. Denckla**, 357 U.S. 235, 251 (1958); **Pennoyer v. Neff**, 95 U.S. 714 (1877); **Avery v. Bender**, 126 Vt. 342, 345 (1967). Since the action is not based entirely on diversity and the claim did not arise in this district, the action fails to meet the venue requirements imposed by U.S.C. § 1391 (a).

There is another more formidable lion in the path of this action that has not been stressed by the defendants. In **Barber v. Barber**, 21 How. (62 U.S.) 582, 584 (1859), the Supreme Court disclaimed "altogether any jurisdiction in courts of the United States upon the subject of divorce."

Justice Field's opinion in **Pennoyer v. Neff, supra**, 95 U.S. at 734-35, observed:

> The State, for example, has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved.

The view has been more recently confirmed in **Sosna v. Iowa**, 419 U.S. 393, 404 (1975). **See also Bossom v. Bossom**, __ F.2d __ (2d Cir. Slip op. No. 76-7316, Dec. 17, 1976).

On each and all of these considerations the action must be dismissed. The Clerk will enter an order to accomplish this result.

Dated at Rutland, in the District of Vermont, this 1st day of February, 1977.

(s) James S. Holden
Chief Judge

Appendix D

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Eldad Brophy, Husband	)	
	)	Civil Action
v.	)	
	)	File No. 76-224
State of New Hampshire	)	
Graper & Swanson, Professional Association and as Individuals	)	
Ann Brophy, Wife	)	

MEMORANDUM AND ORDER

The complaint in this action is similarly stated to that in **Bernstein v. State of Florida**, Civil Action No. 76-212. It is drafted by the same hand in behalf of Eldad Brophy, "a resident pro tem of the State of Vermont" — who is a "Born Again Christian," allegedly victimized by the divorce laws of the State of New Hampshire. He seeks to have a divorce granted in New Hampshire declared null and void and asks for monetary damages and injunctive relief. All defendants have moved to dismiss the action on grounds similar to those advanced in **Bernstein v. Florida**.

For the reasons stated in the court's memorandum in **Bernstein v. Florida**, the motions of the defendants are granted. The motions of the defendants State of New Hampshire and Graper & Swanson for attorney's fees are denied for the reason that the court specifically indicated to the defendants that they were not required to argue the motions orally and the court would consider their respective motions on the written briefs. The Clerk will enter an order dismissing the action. It is SO ORDERED.

Dated at Rutland, in the District of Vermont, this 1st day of February, 1977.

(s) James S. Holden
Chief Judge

Appendix E

HOLY BIBLE

Mark 10: 1-12

1. And he arose from thence, and cometh into the coast of Judaea by the farther side of Jordan: and the people resort unto him again; and, as he was wont, he taught them again.
2. And the Pharisees came to him, and asked him, Is it lawful for a man to put away his wife? tempting him.
3. And he answered and said unto them, What did Moses command you?
4. And they said, Moses suffered to write a bill of divorcement, and to put her away.
5. And Jesus answered and said unto them, For the hardness of your heart he wrote you this precept.
6. But from the beginning of the creation God made them male and female.
7. For this cause shall a man leave his father and mother, and cleave to his wife;
8. And they twain shall be one flesh: so then they are no more twain, but one flesh.
9. What therefore God hath joined together, let not man put asunder
10. And in the house his disciples asked him again of the same matter.
11. And he saith unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her.
12. And if a woman shall put away her husband, and be married to another, she committeth adultery.